IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.453 OF 2007
WITH
CIVIL APPLICATION NO.769 OF 2007

Shri Yeshwant Nagu Hetkale
(Deceased) through his legal
heirs Ramchandra Yeshwant Hetkale & Ors. ..Appellants.
Vs.
Shri Ramesh Gundappa Muthekar ..Respondent.

Mr.S.K.Chinchalkar, adv. for the Appellants.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 21, 2007.

P.C.:

1. Heard the learned counsel for the appellants.

2. The appellant is original plaintiff. According to him he is in possession of 1/5th share from the suit property bearing survey no.4957/A-1 of Miraj and is in possession of the same as owner. In the remaining property, defendant Ramesh Muthekar holds 1/5th share, Yashwant Zadage, Maruti Kale and Kishan Chorage hold 1/4th share each. According to the plaintiff, he is in possession of remaining 4/5th share including the share of the defendant as a tenant for the last thirty to thirty-two years. Defendant purchased 1/5th share of Bapu Muthekar and he is trying to erect a compound wall in the suit property. Therefore, plaintiff filed suit for perpetual injunction restraining the defendant from

raising any such wall.

3. The defendants contested the suit and contended that the plaintiff is in possession of middle share of the plot and his share is admeasuring 19 feet East-West and 21 ft. 4 inches North-South. That portion is given City Survey No.4957/A-1 and there is no dispute about that property. According to him, he has purchased Southern side portion admeasuring 19 ft. East-West and 21 ft. 4 inches Northern from the legal heirs of Shankar Maruti Muthekar. He denied that the plaintiff is in possession of the same. According to him, he obtained necessary permission for the construction of the compound wall. After hearing the evidence of the parties, the trial Court dismissed the suit of the plaintiff. Thereafter, Regular Civil Appeal No.19 of 1992 was also dismissed. There is concurrent finding of the Courts below that the plaintiff is not in possession and has no legal right over the suit property belonging to the defendant. No question of law is involved. Therefore, the appeal stands dismissed.

4. As the appeal is dismissed, civil application no.769 of 2007 does not survive and it also stands disposed off accordingly.

[J.H.BHATIA, J.]